where the jury were instructed that if they believed that certain persons, whom the evidence showed were the ones who performed such duties, were appointed to perform them, that they were the engineers.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 651-659; Dec. Dig. § 260.* 7 Va.-W. Va. Enc. Dig. 742; 14 Va.-W. Va. Enc. Dig. 565; 15 Va.-W. Va. Enc. Dig. 521.]

Error to Circuit Court, Tazewell County.

Action by the Luck Construction Company against the County of Russell. Judgment in favor of the defendant, and the plaintiff brings error. Affirmed.

*Hart & Hart,* of Roanoke, *Chapman & Gillespie,* of Tazewell, and *Finney & Wilson,* of Lebanon, for plaintiff in error.

*H. A. Routh,* of Lebanon, and *Henson & Bowen* and *A. S. Higginbotham,* all of Tazewell, for defendant in error.

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VIRGINIAN RY. CO. *v.* BELL.

Sept. 11, 1913.

[79 S. E. 396.]

**1. Railroads (§ 282*)—Injuries to Mail Clerk—Contributory Negligence—Instructions.**—In an action for injuries to a railway mail clerk, where there was evidence that he knew of the defective condition of the car, and that the door would shut upon a sudden checking of the speed of the train, and that he failed to take such precautions for his safety as he could have done, the defendant was entitled to have the question of contributory negligence submitted to the jury clearly and fully.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 910-923; Dec. Dig. § 282.* 2 Va.-W. Va. Enc. Dig. 707; 14 Va.-W. Va. Enc. Dig. 195; 15 Va.-W. Va. Enc. Dig. 162.]

**2. Railroads (§ 282*)—Injuries to Mail Clerk—Contributory Negligence—Instructions.**—In such an action, instructions given for the plaintiff, which only impliedly require the jury to find freedom from contributory negligence by stating that they must find that the negligence of the defendant was the sole proximate cause of the injury, and by placing the burden of proving contributory negligence upon the defendant, do not submit fully and clearly the question of contributory negligence.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 910-923; Dec. Dig. § 282.* 2 Va.-W. Va. Enc. Dig. 707; 14 Va.-W. Va. Enc. Dig. 195; 15 Va.-W. Va. Enc. Dig. 162.]

**3. Trial (§ 267*)—Instructions—Applicability to Evidence—Injuries to Passengers.**—In an action for personal injuries to a railway

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

mail clerk, where there is evidence tending to show contributory negligence, and the carrier submits an instruction which is erroneous as making the issue a question of law upon certain facts instead of a question of fact, the court should modify the instruction, or should give another instruction, which submits the issue of contributory negligence as fully as the instructions for the plaintiff submitted the issue of the defendant's negligence.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 668-674; Dec. Dig. § 267.* 7 Va.-W. Va. Enc. Dig. 717; 14 Va.-W. Va. Enc. Dig. 563; 15 Va.-W. Va. Enc. Dig. 513.]

**4. Trial (§ 296*)—Instructions—Misleading Instruction.**—Where a declaration for injuries to a railway mail clerk alleged in two counts that the carrier was negligent in running its train at a rapid rate of speed and suddenly checking it, and in two other counts alleged negligence in other respects, but under such circumstances that the injury would not have happened unless the train had been suddenly checked while running at a rapid rate of speed, instructions as to the negligence in the last two counts, which did not require a finding that the train was suddenly checked while running at a rapid speed, did not mislead the jury to believe that the plaintiff could recover without showing the sudden checking, where an instruction, given at the defendant's request, expressly told them that there could be no recovery unless such fact was proved.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 705-713, 715, 716, 718; Dec. Dig. § 296.* 2 Va.-W. Va. Enc. Dig. 721; 14 Va.-W. Va. Enc. Dig. 202; 15 Va.-W. Va. Enc. Dig. 167.]

**5. Trial (§ 282*)—Instructions—Applicability to Evidence—Injuries to Passengers.**—In an action by a railway mail clerk for injuries caused by the door sliding shut upon him, where he testified that he was looking out to see where they were, when the engineer checked the speed of the train, and caused the door to shut, and another mail clerk testified that under such circumstances he would not have used a hook to fasten the door open, if there had been one, the question of whether he would have used a hook should have been submitted to the jury in the instruction submitting negligence in failing to supply it.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 695, 696; Dec. Dig. § 282.* 2 Va.-W. Va. Enc. Dig. 721; 14 Va.-W. Va. Enc. Dig. 202; 15 Va.-W. Va. Enc. Dig. 167.]

**6. Trial (§ 252*)—Instructions—Applicability to Evidence.**—A requested instructions which is not supported by the evidence is properly refused.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 505, 596-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

612; Dec. Dig. § 252.* 7 Va.-W. Va. Enc. Dig. 718; 14 Va.-W. Va. Enc. Dig. 563; 15 Va.-W. Va. Enc. Dig. 513.]

**7. Trial (§ 251*)—Instructions—Applicability to Issues—Injuries to Passengers.**—Where two counts of a declaration for injuries to a railway mail clerk charged the carrier with negligence in furnishing a defective car and in properly placing it in the train, so that the door slid shut upon the clerk, when the speed of the train was suddenly checked, but did not allege negligence in the checking of the train, instructions requested by the defendant, which based the plaintiff's right of recovery upon the defendant's negligence in the running of its train, were properly refused.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 587-595; Dec. Dig. § 251.* 7 Va.-W. Va. Enc. Dig. 723; 14 Va.-W. Va. Enc. Dig. 564; 15 Va.-W. Va. Enc. Dig. 515.]

**8. Carriers (§ 218*)—Railroads (§ 278*)—Carriage of Passengers—Railway Mail Clerks—Contributory Negligence—Assumption of Risk.**—A railway mail clerk in the discharge of his duties, while he is required to exercise ordinary care in using a defective door of the mail car, and cannot recover if he fails to do so, is, nevertheless, entitled to the same degree of care as a passenger, and does not assume the risk of the defect, even though he knew of it and did not report it.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 674-696, 927, 928, 933-949; Dec. Dig. § 218;* Railroads, Cent. Dig. §§ 891-900; Dec. Dig. § 278.* 2 Va.-W. Va. Enc. Dig. 707; 14 Va.-W. Va. Enc. Dig. 195; 15 Va.-W. Va. Enc. Dig. 162.]

Error to Circuit Court, Montgomery County.

Action by O. C. Bell against the Virginian Railway Company. Judgment for plaintiff, and defendant brings error. Reversed, and new trial awarded.

*Hall & Woods,* of Roanoke, *H. J. Phlegar,* of Christianburg, and *G. A. Wingfield,* of Norfolk, for plaintiff in error.

*Hunt & Staples,* of Roanoke, for defendant in error.

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SOUTH ATLANTIC LIFE INS. CO. *v.* HURT'S ADM'X.

Sept. 11, 1913.

[79 S. E. 401.]

**1. Insurance (§ 646*)—Life Policy—Defenses—Suicide—Burden of Proof.**—In an action on a life policy, the burden is on the defendant to prove a defense of suicide by clear and satisfactory evidence

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.